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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/085,190      | 02/27/2002  | Theodore Wortrich    |                     | 1444             |

7590 10/19/2004  
Raymond A. Bogucki  
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6914 Canby Ave.  
Reseda, CA 91335

EXAMINER

NGUYEN, VI X

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3731

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/085,190

Applicant(s)

WORTRICH, THEODORE

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-11 are rejected under 35 U.S.C. 102 (e) as being anticipated by Hellenkamp (U.S. 6,527,788).

Hellenkamp discloses in figs. 6a, 7 and col. 4, lines 1-65, a microkeratome blade having the limitations of claim 9, including: a cutting blade (310, 310') has a thin body with an anterior linear boundary beveled to a cutting tip (313). The cutting blade also includes a substantially continuous curvilinear posterior boundary extending from one end corner of the anterior boundary (313 on an anterior side of the cutting blade as seen in fig. 7) to the other end corner (314 is considered the other end corner of the cutting blade) in a generally hemispherical form (fig. 7, the blade of Hellenkamp can be characterized as a generally hemispherical form, i.e., a half of a symmetrical, approximately spherical object as divided by a plane of symmetry.). The blade body also is formed to include an aperture (see col. 11, lines 33-40).

Regarding claims 10-11, Hellenkamp discloses the blade body includes a slot (see col. 12, lines 5-9) at a posterior position opening to the interior aperture from the posterior edge. The device further includes a blade holder (320) having a blade engaging surface including a boss

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(328, fig. 6a) configured to mate within the holder, and where further includes a slot between the posterior boundary and the interior aperture (figures 6a, 7).

***Allowable Subject Matter***

2. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses all of the limitations of claim 12 including, the blade is of about 0.01'' thick and the anterior boundary is in the range of 0.450'' to 0.525'' long, where the maximum anterior to posterior dimension is in the range of 0.300-0.400'' deep, and where the bevel at the anterior boundary is angled to extend about 0.050'' deep.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Amendment***

3. Applicant's arguments with respect to claims 9-12 have been considered but they are not persuasive. Applicant is asked to please refer to the modified prior art rejection above wherein examiner addresses applicant's concerns regarding prior art rejections. For example, Hellenkamp discloses in figs. 6a, 7 and col. 4, lines 1-65, a microkeratome, including: a cutting blade (310, 310') has a thin body with an anterior linear boundary beveled to a cutting tip (313). The cutting blade also includes a substantially continuous curvilinear posterior boundary extending from one end corner of the anterior boundary (313 on an anterior side of the cutting

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blade as seen in fig. 7) to the other end corner (314 is considered the other end corner of the cutting blade) in a generally hemispherical form (fig. 7, the blade of Hellenkamp can be characterized as a generally hemispherical form, i.e., a half of a symmetrical, approximately spherical object as divided by a plane of symmetry.). The blade body also is formed to include an aperture (see col. 11, lines 33-40).

### *Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

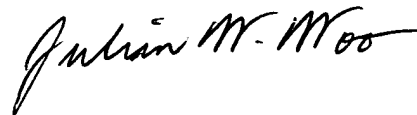
The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn ✓  
10/15/2004



**JULIAN W. WOO**  
**PRIMARY EXAMINER**